

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAY 20 2014

OFFICE OF  
MANAGING DIRECTOR

Manning M. Kimmel, IV  
Our Three Sons Broadcasting, LLP  
142 N. Confederate Avenue  
Post Office Box 307  
Rock Hill, SC 29731-6308

Licensee/Applicant: **Our Three Sons  
Broadcasting, LLP**

Waiver Request; Late Payment Penalty

Disposition: Dismissed (31 U.S.C. § 3711(g), 31  
C.F.R. § 285.12, 47 U.S.C. § 159(c)(1), 47 C.F.R. §  
1.1164)

Stations: WRHM, WVSZ, WRHI, and W232AX

Fees: Fiscal Year (FY) 2011 Regulatory Fee Late  
Fees

Date Request Filed: (dated Nov. 1, 2013; filed  
Nov. 12, 2013)

Date Regulatory Fees and Charges Paid: Nov. 14,  
2013

Fee Control No.: RROG-13-00015501

Dear Mr. Kimmel:

This responds to Licensee's *Request*<sup>1</sup> for waiver of the penalties for late payment of FY 2011 regulatory fees. For the reasons stated below, we dismiss the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,<sup>2</sup> and "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."<sup>3</sup>

<sup>1</sup> Letter from Manning M. Kimmel, VI, Our Three Sons Broadcasting, LLP to Office of the Managing Director, FCC, 445 12<sup>th</sup> Street, SW, Washington, DC 20554 (dated Nov. 1, 2013; filed Nov. 12, 2013)(*Request*).

<sup>2</sup> 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

<sup>3</sup> 47 C.F.R. § 1.1164; 47 C.F.R. § 1.1157(c)(1), 47 U.S.C. § 159(c)(1).

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2011, the deadline for paying regulatory fees was September 16, 2011.<sup>4</sup> We did not receive Licensee's payments by that deadline, thus the debts were delinquent.<sup>5</sup> As a result, we applied debt collection procedures that included, (1) assessing mandatory penalties, and if the debts remained delinquent, additional charges,<sup>6</sup> (2) applying required administrative sanctions<sup>7</sup> that result in dismissal of actions filed by delinquent debtors, and (3) transferring the delinquent debts to the United States Department of the Treasury for collection action.<sup>8</sup> After we transfer debts, Treasury assumes responsibility for collection activity, and questions for the creditor agency must be processed through Treasury.

On the date Licensee filed<sup>9</sup> its *Request*, our records show Licensee was delinquent in paying its debts, and that had already transferred those debts to Treasury.<sup>10</sup> Accordingly, we would have dismissed the *Request*. Furthermore, on November 14, 2013, Licensee paid Treasury the amount due, which mooted the relief. Thus, on that additional ground, we dismiss. Even so, as a courtesy, we will address Licensee's questions.

First, the Commission does not send reminder notices by mail or email, so the absence of such notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.<sup>11</sup> Moreover, repeatedly, the Commission has held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and they will not be excused for violations thereof, absent clear mitigating circumstances."<sup>12</sup>

<sup>4</sup> See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

<sup>6</sup> *Request*.

<sup>5</sup> 47 C.F.R. § 1.1901(i).

<sup>6</sup> See 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157, 1.1164; 31 U.S.C. § 3717.

<sup>7</sup> 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), see also 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").

<sup>8</sup> 31 U.S.C. § 3711 and 31 C.F.R. § 285.12.

<sup>9</sup> 47 C.F.R. § 1.7 (pleadings are filed upon receipt at the location designated by the Commission).

<sup>10</sup> 47 C.F.R. § 1.1164(e) and 31 C.F.R. § 285.12.

<sup>11</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Notice of Proposed Rulemaking and Order, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); *Fee Filer Mandatory for FY 2009 Regulatory Fees*, Public Notice, 24 FCC Rcd 10893 (Aug. 21, 2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, Report and Order, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

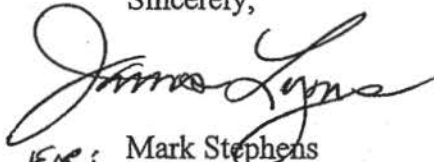
<sup>12</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).



Next, Licensee did not raise valid grounds for relief. Licensee requested a waiver of the mandatory charges. When we evaluate such matters, we look to whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee's *Request* does not. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



For: Mark Stephens  
Chief Financial Officer